

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTY S. THOMPSON and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Glynco, GA

*Docket No. 01-2039; Submitted on the Record;
Issued July 2, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant's disability commencing September 13, 1997 is causally related to the August 10, 1995 employment injury.

This case is on appeal to the Board for the second time.¹ On the first appeal, the Board affirmed the decision of the Office of Workers' Compensation Programs' hearing representative dated January 20, 1999 in which the Office hearing representative determined that the evidence of record failed to establish that appellant was totally disabled due to the August 10, 1995 and May 10, 1996 employment injuries. In the January 20, 1999 decision, the Office hearing representative noted that appellant's complaint was that the commute to work, *i.e.*, 60 miles one way, not the work itself, aggravated her back and prevented her from working as of September 13, 1997. The Office hearing representative found, however, that none of the medical evidence appellant submitted established that her commute to work rendered her unable to work and denied the claim.² The Board found that the Office hearing representative's findings were proper and affirmed the decision.

By letter dated March 30, 2001, appellant requested reconsideration of the Office's decision.

By decision dated April 12, 2001, the Office denied appellant's request for reconsideration.

By letter dated April 17, 2001, appellant requested reconsideration of the Office's decision and submitted additional evidence consisting of a report from Dr. Paul C. Lorenzen, a

¹ Docket No. 99-1515 (issued March 21, 2001).

² For instance, in his reports dated September 12, October 14 and November 12, 1997, appellant's treating physician, Dr. Henry C. Deriso, a Board-certified orthopedic surgeon, stated that appellant could work with restrictions but driving 50 miles or any distance would aggravate her degenerative disc disease. In a report dated November 30, 1998, Dr. Stephen G. Pappas, a Board-certified psychiatrist and neurologist, opined that driving over 100 miles round trip was not recommended.

Board-certified orthopedic surgeon, dated November 19, 1999, reports from appellant's treating physician, Dr. Pappas, dated March 24 and April 26, 1999, reports from Dr. Calvin H. Hudson, a Board-certified neurological surgeon, dated October 4 and 22, 1999, and a decision from the Social Security Administration (SSA) dated January 26, 2000 awarding appellant disability benefits commencing September 13, 1997.

In his November 19, 1999 report, Dr. Lorenzen considered appellant's history of injury, performed a physical examination and reviewed x-rays and a magnetic resonance imaging (MRI) scan. He diagnosed postlaminectomy back and lower extremity pain. Dr. Lorenzen opined that appellant sustained a new injury to the L5-S1 disc at the time of the automobile accident and the L4-5 level might have been aggravated by the car accident due to showing of irritability at that level. He concluded that appellant was capable of very sedentary work and was capable of walking and driving "in the proper circumstances."

In his report dated March 24, 1999, Dr. Pappas stated that he examined appellant on February 23, 1999, reviewed an MRI scan and opined that appellant was significantly disabled on the basis of lumbar degenerative disc disease. He stated that the motor vehicle accident exacerbated appellant's condition. Dr. Pappas opined that appellant could work with a 10-pound lifting restriction and the avoidance of repetitive or heavy lifting or bending. In his April 26, 1999, Dr. Pappas stated that he examined appellant on March 13, 1999, reviewed an MRI scan, an electromyogram and nerve conduction studies. He reiterated that appellant was significantly disabled based on persistent lumbar degenerative disc disease with postoperative changes and lumbar radiculopathy, and added that appellant should not drive long distances.

In his report dated October 4, 1999, Dr. Hudson considered appellant's history of injury, performed a physical examination and reviewed the MRI scans, a myelogram and a computerized axial tomography (CAT) scan. He stated that appellant had failed back syndrome and probably would not require surgery but reserved his opinion pending his review of the most recent MRI scan.

In his report dated October 22, 1999, Dr. Hudson reviewed the MRI scan performed in February 1999 and stated that it showed significant pressure phenomenon at L5-S1 on the right with significant pushing of the nerves over to the left. He found the details were "a little unclear" and suggested that appellant undergo a lumbar myelogram and CAT scan and was awaiting to hear her response.

By decision dated May 10, 2001, the Office denied appellant's request for reconsideration.

Appellant has the burden to establish continuing disability due to a work-related injury.³ This burden may be met by submitting rationalized medical evidence showing the causal relationship between appellant's ongoing disability and her employment.⁴

In the present case, the medical evidence appellant submitted in her request for reconsideration does not establish that she is unable to perform her light-duty job. In his November 19, 1999 report, Dr. Lorenzen opined that appellant was capable of very sedentary work and was capable of walking and driving "in the proper circumstances." His opinion, however, is not probative in establishing that appellant was disabled because he opined that appellant could work and that she could drive "in the proper circumstances," and he did not explain what the "proper" circumstances were. Dr. Lorenzen's opinion does not establish that appellant's commute to work disabled her from working. Dr. Pappas' March 24 and April 26, 1999 reports in which he opined that appellant could work with restrictions but should not drive long distances is not probative because he does not explain how appellant is disabled from performing her job or that her commute disabled her. Dr. Hudson's October 4 and 22, 1999 reports in which he addressed his treatment of appellant are not probative because Dr. Hudson did not address disability. The decision from the SSA dated January 26, 2000 awarding appellant disability benefits commencing September 13, 1997 is not probative because the Board has held that decisions by other federal agencies including the SSA are not determinative of disability under the Federal Employees' Compensation Act.⁵ Since none of the medical evidence appellant submitted establishes that her disability commencing September 13, 1997 is work related, she has failed to establish her claim.

The May 10 and April 12, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
July 2, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

³ *Donald Leroy Ballard*, 43 ECAB 876, 882 (1992).

⁴ *Gary L. Fowler*, 45 ECAB 365, 371 (1994); *Ern Reynolds*, 45 ECAB 690, 695 (1994); *Donald Leroy Ballard*, *supra* note 3 at 881.

⁵ *See Danuek Deparini*, 44 ECAB 657, 660 (1993).